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NO. 39

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

HANK AVERY, *Petitioner*

v.

MIDLAND COUNTY, TEXAS, ET AL., *Respondents*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinions delivered by the courts below are not reported officially.

The majority opinion of the Supreme Court of Texas (R. 141-151) is unofficially reported at 406 S.W.2d 422. The dissenting opinion of such court (R. 151-159) is unofficially reported at 406 S.W.2d 429. The opinion of the Court of Civil Appeals, Eighth Supreme Judicial District of Texas (R. 134-140), is unofficially reported at 397 S.W.2d 919.

JURISDICTION

This suit was instituted in a State District Court seeking to have the current and all prior Orders of the Commissioners' Court of Midland County, Texas, dividing the County into Commissioners' Precincts set aside and said Commissioners' Court directed to redivide the County into Commissioners' Precincts so that each such Precinct would have substantially the same number of people (R. 1-16). This right was claimed under Article V, Sec. 18 and Article I, Secs. 3 and 19 of the Constitution of the State of Texas and under Sec. 1 of the Fourteenth Amendment of the Constitution of the United States.

The Judgment of the Supreme Court of Texas was entered on July 13, 1966 (R. 141). Within 15 days thereafter, the time provided by the Texas Rules of Civil Procedure, a motion for rehearing was filed by Petitioner (R. 161); such motion was overruled, without written opinion, on October 12, 1966 (R. 163). Petition for Writ of Certiorari to the Supreme Court of Texas was filed on January 10, 1967; such Petition was granted by this Court on June 12, 1967 (R. 164).

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Literally hundreds of statutes of the State of Texas relate to the functions of County government. However, for the sake of brevity, only statutes representative of the general character, duties, and responsibilities of the governing body (Commissioners' Court) of a County are cited herein.

Fourteenth Amendment, Sec. 1, United States Constitution, Appendix infra, p. 1; 28 U.S.C. Sec. 1257(3), Appendix infra, p. 1; and Article I, Secs. 3 and 19, Article V, Sec. 18, Article VIII, Secs. 9 and 18, and Article XVI, Sec. 61, Constitution of Texas, Appendix infra, pp. 2-6. The following enactments of the Texas Legislature: Articles 689a-9, 689a-9a, 689a-10, 689a-11, 796, 797, 1015c, 1269h, 1572, 1581e, 1659, 1677, 2339, 2342, 2350(2), 2351, Secs. 1-20, 2351a-1, 2351f, 2351q, 2352, 2352d, 2355, 2356, 2370, Sec. 1, 2372d-2, Election Code, Articles 2.04 and 3.01, 3264a, 4436a-1, 4478, 4492, 6081f, 6626, 6701d, Sec. 169, Vernon's Texas Civil Statutes, Appendix infra, pp. 6-39. Orders of the Commissioners' Court of Midland County, Texas, dated August 31, 1963 and January 7, 1964, Appendix infra, pp. 42-51.

QUESTION PRESENTED

Whether the Fourteenth Amendment's equal protection clause permits the continuation of the practice of the Commissioners' Court of Midland County to divide said County into Commissioners' Precincts so grossly disproportionate in population that less than five percent of the County's total population elects a majority of the members of the Commissioners' Court, the County's governing body. Specifically, whether the principle of "one man—one vote" enunciated in *Reynolds v. Sims*, 377 U.S. 533 is applicable to the election by precinct of the members of the governing body of Midland County, Texas.

STATEMENT OF THE CASE

The State of Texas contains 254 counties. Each county has its own governing body, called the Commissioners' Court. Such governing body is composed of five members

—a County Judge, who is elected county-wide, and four County Commissioners, each of whom is elected by the voters of the Commissioner's Precinct in which he resides. The County Judge is the presiding officer of the Commissioners' Court, but may vote on matters under consideration by that body only in the event of a tie. The division or revision of the County into the four Commissioners' Precincts is the responsibility of the Commissioners' Court. Article V, Section 18, Constitution of Texas, Appendix infra p. 2.

The county in issue, Midland County, is square in shape; it contains 900 square miles, approximately 70,000 people, and one incorporated municipality—the City of Midland. County Commissioner's Precinct No. 1, which includes virtually all of the City of Midland, is predominantly urban in character; Commissioners' Precincts Nos. 2, 3, and 4 are predominantly rural in character (R. 43, 44, 101-102).

Petitioner, a citizen, taxpayer, and voter of the United States, the State of Texas, Midland County, and County Commissioner's Precinct No. 1, brought this action, individually and on behalf of others similarly situated, against Respondents to set aside an Order of the County Commissioners' Court dividing the County into four new Commissioners' Precincts. Such Order was adopted by Respondents on August 31, 1963, to become effective on January 1, 1964. Petitioner further sought to have said Respondent Commissioners directed to redivide said County into Commissioners' Precincts having substantially the same number of people (R. 1-16).

The Trial Court granted this relief (R. 130-133); however, the Appellate Courts, including the Supreme Court of Texas, denied Petitioner relief in his effort to require

the Commissioners' Court to redistrict the County into four Commissioners' Precincts substantially equal in population (R. 141).

The Federal Question involved here was raised in the Trial Court by the Petition upon which Petitioner went to trial (R. 1; 12), and in the Supreme Court of Texas by assignment of errors, as reflected by the opinion of that court (R. 141).

The facts in this case are simple and clear. The following unchallenged findings are among those made by the Trial Court in support of its judgment:

1. On August 31, 1963, the Respondents Gideon, Bryant, Moreland, and Osborne, constituting and acting as members of the Commissioners' Court of Midland County, adopted an Order dividing the County into four new Commissioners' Precincts, the boundaries thereof to become effective on January 1, 1964 (R. 130).

2. The division effected by such Order made only insignificant changes in the Commissioners' Precincts as they existed prior to such Order (R. 131).

3. On the date of such Order, Midland County had a population of approximately 70,000 persons and in excess of 95 percent of such population resided in the new Commissioner's Precinct No. 1 (R. 131).

4. On the date of such Order, in excess of 97 percent of the qualified voters of such County shown on the certified list of qualified voters prepared by the County Tax Assessor-Collector resided in the new Commissioner's Precinct No. 1 (R. 131).

As they relate to the four precinct-elected members of the Commissioners' Court, the foregoing facts and figures

clearly establish that more than 95 percent of the population (predominantly urban) is accorded only 25 percent representation on the County's governing body, while less than five percent of the population (predominantly rural) is accorded 75 percent representation on such governing body. In a County having a population of 70,000 people, less than 3,500 can and do elect a majority of the members of the Commissioners' Court, thereby exercising perpetual veto power over the will of more than 66,500 people. Assuming total population participation in such an election, a voter from Commissioner's Precinct No. 2, 3 or 4 (the rural voter) possesses 57 times the voting power of a voter from Commissioner's Precinct No. 1 (the urban voter). Assuming total qualified voter participation in such an election, a voter from Commissioner's Precinct No. 2, 3, or 4 (the rural voter) possesses 97 times the voting power of a voter from Commissioner's Precinct No. 1 (the urban voter).

The Trial Court's judgment recited these further findings:

1. The action of the Respondents in passing and approving such Order constituted invidious discrimination (R. 132).

2. The County could have been divided into Commissioners' Precincts on a basis or plan taking into proper account population and other pertinent factors which would have been and would be practical and for the convenience of the people (R. 131).

3. The principal purposes of the Respondents, or a majority thereof, in passing and approving such Order were for political expediency, to maintain the status quo, and to insure that the rural areas of the County would continue to elect a majority of the members of the Commissioners' Court (R. 132).

ARGUMENT

I. The Commissioners' Court of Midland County is an elective governing body performing legislative and administrative functions.

In Texas, a County is a body corporate and politic,[1] a political subdivision, a subordinate and derivative branch of State government. It is governed by a Commissioners' Court. The composition of such governing body and the method of selecting its members are standard. Each County is divided into four Commissioners' Precincts; this division, which may be changed from time to time, is the exclusive responsibility and privilege of the Commissioners' Court of the County. The qualified voters of each such Precinct elect a County Commissioner. These four Commissioners together with the County Judge, who is elected county-wide, comprise the Commissioners' Court.

The foregoing standards are established by the Texas Constitution;[2] they could be modified only by constitutional amendment.[3]

A Commissioners' Court derives its powers from the Constitution and laws of the State; its functions are both legislative[4] and administrative. It typifies representative government at the local level—and its actions have a profound effect on the health, safety, and welfare of those it governs.

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1. Article 1572, V.T.C.S.
2. Article V, Secs. 18 and 15, Texas Constitution.
3. This may be accomplished in Texas only if the proposed amendment is approved by two-thirds of the full membership of each House of the Texas Legislature and by a majority of the qualified voters of the State voting on such proposition in a State-wide election. Article XVII, Sec. 1, Texas Constitution.
4. *Brown v. Meeks*, 93 S.W.2d 839 (Tex. Civ. App., dism.).

Perhaps no power possessed by the Commissioners' Court is more legislative in character than the very matter giving rise to this complaint—the authority of the precinct-elected representatives (Commissioners) to establish or reestablish the boundaries of the precincts from which they are elected. However, this is but one of many constitutional and statutory powers conferred on a Commissioners' Court. Others were summarized by the Respondents themselves during the trial of this cause (R. 59-64, 97-99); a multitude of others have been delegated to the County governing body. Though by no means all inclusive, the following are illustrative of the authorized duties and responsibilities of a Commissioners' Court:

TAX. To levy taxes for general County purposes and to retire bonded debt;[5] to establish the tax rate;[6] to serve as a Board Equalization[7] to equalize property values for ad valorem tax purposes; to alter the percentage of value at which property will be taxed;[8] and to adjust disputed tax claims.[9]

FISCAL. To adopt a budget for all County expenditures;[10] to set salaries for all County officials and employees, including members of the Commissioners' Court;[11] to make all purchases;[12] to lease County property, including mineral estates;[13] to settle debts;[14] to au-

5. Article 2352, V.T.C.S.; Article VIII, Sec. 9, Texas Constitution.
6. Id., (R. 97).
7. Article VIII, Sec. 18, Texas Constitution; (R. 61)
8. *Jopling v. City of LaGrange*, 256 S.W.2d 901 (Tex. Civ. App., ref.).
9. Article 7345d, V.T.C.S.
10. Article 689a-9, 9a, 10, 11, V.T.C.S.
11. Id., Article 2350(2), V.T.C.S., (R. 59, 91).
12. Article 1659, V.T.C.S.; (R. 59, 91).
13. Articles 2351, Sec. 18c, and 2370, Sec. 1, V.T.C.S.
14. Article 976, V.T.C.S.

thorize andits;[15] and to create a revolving fund for welfare purposes.[16]

HEALTH. To own and operate hospitals;[17] to acquire and operate garbage dumps;[18] to clean streams;[19] to participate in City-County health units;[20] to provide medical care for the indigent;[21] and to bury paupers.[22]

SAFETY. To provide fire protection;[23] to establish speed limits;[24] to provide flood control;[25] and to control, through budgeting practices, the extent and quality of police protection available to citizens by determining the number of deputies and the equipment available to the Sheriff's Department and to the Constables' offices.[26]

PUBLIC FACILITIES. To acquire, own, operate, and regulate hospitals,[27] libraries,[28] airports,[29] ferries,[30] cemeteries,[31] public housing, [32] water works,[33] and parks and recreational facilities.[34]

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15. Article 2351, Sec. 10, V.T.C.S.
16. Article 2351, Sec. 17a, V.T.C.S.
17. Article 4478, V.T.C.S.
18. Article 2351q-1, V.T.C.S.
19. Article 2351, Sec. 16, V.T.C.S.
20. Articles 4436a-1 and 4492, V.T.C.S.
21. Id.; Article 2351, Sec. 11, V.T.C.S.
22. Article 2351, Sec. 12, V.T.C.S.
23. Article 2351a-1, V.T.C.S.
24. Article 6701d, Sec. 169, V.T.C.S.
25. Article 1581e, V.T.C.S.
26. Articles 689a-9, 9a, 10, 11, V.T.C.S.; (R. 59, 97).
27. Article 4478.
28. Article 1677, V.T.C.S.
29. Articles 1269h and 2351, Sec. 18a, V.T.C.S.
30. Article 2351, Sec. 2, V.T.C.S.
31. Article 2351f, V.T.C.S.
32. Article 2351, Sec. 19a-e, V.T.C.S.
33. Article 2351, Sec. 20, V.T.C.S.
34. Articles 1015c-1 and 6081f, V.T.C.S.

PUBLIC BUILDINGS. To acquire or construct public buildings, including courthouses;[35] jails,[36] and auditoriums and coliseums.[37]

ROADS AND BRIDGES. To acquire the right-of-way for and to construct, maintain, and control roads and bridges.[38]

EMINENT DOMAIN. To exercise the power of eminent domain for any authorized public purpose,[39] including roads, public facilities, public buildings, and flood control.[40]

PRECINCT BOUNDARIES. To divide the County from time to time into Commissioners' Precincts, Justice of the Peace Precincts, and Election Precincts.[41]

ELECTIONS. To call elections, to appoint election officials, and to canvass returns and declare the results of elections.[42]

MISCELLANEOUS. To regulate the subdivision of land;[43] to issue and sell bonds;[44] to fill vacancies in elective County offices;[45] to punish for contempt;[46] to cooperate with the Federal Government in the construction of public works;[47] and to create a Board of Development

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35. Articles 2351, Sec. 7 and 2370, Sec. 1, V.T.C.S.
36. Id.
37. Article 2372d-2, V.T.C.S.
38. Articles 2351, Secs. 3-6, 2352, and 2356, V.T.C.S.
39. Article 3264a, V.T.C.S.
40. Id.; Article 1581e, V.T.C.S.
41. Article V, Sec. 18, Texas Constitution; Article 2.04, Election Code, V.T.C.S.
42. Articles 3.01 and 4.02, Election Code, V.T.C.S.; (R. 60).
43. Article 6626, V.T.C.S.
44. (R. 64, 97).
45. Article 2355, V.T.C.S.
46. Article 2351, Sec. 13, V.T.C.S.
47. Article 2351, Sec. 19a-e, V.T.C.S.

for the purpose of advertising and promoting the growth and development of the County.[48]

Petitioner respectfully submits that the foregoing clearly indicate that the Commissioners' Court, the elective governing body of Midland County, performs both legislative and administrative functions.

II. The equal protection clause applies to the orders of the Commissioners Court of Midland County.

This Court has traditionally held that the protection afforded a citizen under the Fourteenth Amendment blankets the action of the State and all its subordinate units of government. *Home Telegraph and Telephone Co. v. City of Los Angeles,* 227 U.S. 278. To hold otherwise would permit a State, through delegation of its authority, to accomplish indirectly that which it cannot constitutionally accomplish directly. To prevent such circumvention of a federally protected right, the action of a political subdivision is properly regarded as the action of the State itself. *Cooper v. Aaron,* 358 U.S. 1, 16-17.

Here, acting under a conferred power, the Commissioners' Court of Midland County adopted an Order perpetuating gross malapportionment of Commissioners' Precincts, thereby debasing the weight of Petitioner's vote. Such action clearly violates the Equal Protection Clause; it is totally incompatible with the rule of law succinctly stated in *Standard Computing Scale Co. v. Farrell,* 249 U.S. 571, 577:

> ". . . The protection of the Federal Constitution applies, whatever the form in which the legislative

48. Article 2352d, V.T.C.S.

> power of the State is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the State exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission . . .".

Enforcing the provisions of the Fifteenth Amendment, this Court, in *Gomillion v. Lightfoot,* 364 U.S. 339, struck down an alteration of municipal boundaries which had the effect of disfranchising Negroes. In so doing, the Court held that municipalities, no less than the State, are subject to relevant constitutional limitations—to hold otherwise would be to "sanction the achievement by a State of any impairment of voting rights so long as it was cloaked in the garb of the realignment of political subdivisions." (p. 345).

It would appear that the foregoing authorities leave the inescapable conclusion that the Equal Protection Clause, as it relates to the apportionment of a governmental unit, must apply to the Commissioners' Precincts of Midland County. Respondents, no doubt, will take a contrary view, urging that no part of the Fourteenth Amendment should apply to the matter in issue. Those who assume such a position frequently rely on *Tedesco v. Board of Supervisors of Elections for the Parish of Orleans,* 339 U.S. 940; *Glass v. Hancock County Election Commission,* 378 U.S. 558, and, more recently, *Sailors v. Board of Education of the County of Kent,* 87 S. Ct. 1549, ____U.S. ____, and *Dusch v. Davis,* 87 S.Ct. 1554, ____U.S.____. For this reason, a brief discussion of these cases seems appropriate.

At the outset, it should be noted that neither *Tedesco* nor *Glass* was decided on the merits. The former, decided more than a decade before *Baker v. Carr,* 369 U.S. 186,

concerned city council districts in New Orleans. The challenge to such districts was predicated on the Privileges and Immunities Clause of the Fourteenth Amendment; the Equal Protection Clause was not invoked. (See *Baker v. Carr,* 369 U.S. 186, 252, n. 2.). Concluding that no constitutional issue was present, the State court dismissed the cause; an appeal to this Court was dismissed for want of a substantial federal question. Years later, this Court, discussing *Tedesco* in the *Baker* opinion distinguished the former by stating "that no substantial federal question was raised by a state court's refusal to upset the districting of city council seats, especially as it was urged that there was a rational justification for the challenged districting." (369 U.S. 186, 235). It is respectfully submitted that the substantive standards set forth in *Reynolds v. Sims,* 377 U.S. 533, negate any future reliance on "rational justification" in redistricting cases. In addition, *Tedesco* and the authority on which it relied were thoroughly distinguished and undermined in *Baker v. Carr;* a comprehensive discussion and analysis of the treatment of *Tedesco* in the *Baker* decision is found in *Delozier v. Tyrone Area School Board,* 247 F. Supp. 30 (W.D. Penn.).

In *Glass,* a case originating in Mississippi, Plaintiffs sought to enjoin the holding of an election for County Supervisors until County beats were redistricted to conform to population changes. However, the State statute involved provided for initiative petition for an election to change the boundaries of County beats; therefore, the Mississippi Supreme Court merely held that injunction would not issue if there was an adequate remedy at law—and that initiative was such an adequate remedy. *Glass v. Hancock County Election Commission,* 156 So.

2d 825 (Miss. Sup. Ct., 1963). This Court dismissed the appeal for want of jurisdiction and also denied certiorari. It should be noted that in the instant case Petitioner had no remedy other than the one he is presently pursuing through the courts; it should also be noted that this court has now held that the availability of a political remedy does not justify continued malapportionment. *Lucas v. Forty-Fourth General Assembly of Colorado,* 377 U.S. 713, 736-737.

Sailors v. Board of Education of County of Kent, 87 S. Ct. 1549,____U.S.____, is clearly distinguishable from the case under consideration. There, the members of the County School Board occupied appointive, nonlegislative offices. Here, the members of the Commissioners' Court of Midland County occupy elective, legislative and administrative offices.

The last case, *Dusch v. Davis,* 87 S. Ct. 1554, ____U.S. ____, is without analogy to the present action. There, though seven of the councilmen had borough residence requirements, they were elected at large. Here, each of the County Commissioners is elected from a separate precinct.

III. The "One Man, One Vote" principle of *Reynolds v. Sims* should apply to the Commissioners' Court of Midland County.

The Commissioners' Court is the governing body of Midland County. Under the Constitution of the State of Texas, its four Commissioner-members are elected by Precinct. Under the same Constitution, these officials are charged with the responsibility of dividing the County

"from time to time, for the convenience of the people" into Commissioners' Precincts. *Texas Constitution,* Article V, Sec. 18.

Throughout the progression of this cause in the State Courts, Petitioner consistently maintained that such Constitutional provision should be construed in a fashion calculated to achieve compatibility with the Equal Protection Clause of the Fourteenth Amendment. This seemed a logical approach; both relate to people,—the lesser to convenience, the greater to equal protection of the laws. However, only the Trial Court concurred. The State Supreme Court concluded that the basic problem involved was the extent of political power the metropolitan area should have in relation to the rural area. That Court gave consideration to population, but subordinated, or at least equated, it to other factors, such as miles of county roads, land area, geography and taxable values. It is respectfully submitted that this was error. The Fourteenth Amendment grants equal protection to the citizen, and only the citizen —and this regardless of where he lives, whether he be of the majority or the minority, whether he be urban or rural. No other factor, be it miles of County roads, land area, geography, or taxable values, should deny him this protection nor justify the debasement of his vote. These, we submit, were fundamental considerations in the development of the "one man, one vote" principle enunciated in *Reynolds v. Sims,* 377 U.S. 533, and should logically serve as a basis for extending that principle to appropriate local units of governments, such as the Commissioners' Court of Midland County, Texas. Only through such an extension will Petitioner enjoy a full measure of citizenship in the County.

This Court has treated with meticulous care the right to vote and the nature of representative government in this land in such cases as *Reynolds v. Sims*, 377 U.S. 533, *Gray v. Sanders*, 372 U.S. 368, and *Wesberry v. Sanders*, 376 U.S. 1. The temptation to quote extensively from these decisions is strong. Though none dealt directly with local governmental bodies, each contained language most persuasive of the logical application of the equal-population principle to apportionment at the local level. The following brief excerpts are particularly pertinent and penetrating when related to the situation in Midland County:

Reynolds v. Sims

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of franchise." (377 U.S. 555).

". . . The fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence . . ." (377 U.S. 560-561).

". . . The right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights . . ." (377 U.S. 562).

"Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically . . ." (377 U.S. 563).

". . . Representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes . . ." (377 U.S. 565).

"Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment . . . the weight of a citizen's vote cannot be made to depend on where he lives." (377 U.S. 566-567).

Gray v. Sanders

". . . There is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters . . ." (372 U.S. 380).

Wesberry v. Sanders

". . . To say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government . . ." (376 U.S. 7-8).

"Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." (376 U.S. 17).

Petitioner earnestly submits that the foregoing precepts are as applicable to the governing body of Midland County as they are to a State Legislature and thus require that the County's Commissioners' Precincts be substantially equal in population. The Constitution of Texas grants to Petitioner and the other citizens of Midland County the right to elect the members of the Commissioners' Court. It would seem totally inconsistent with the Equal Protec-

tion Clause as construed in *Reynolds v. Sims* to permit such governing body to classify these citizens on any basis other than population.

The great weight of authority in State and lower Federal Courts support the application of the "one man, one vote" principle to local governing bodies. Characteristic of these decisions is *State ex rel. Sonneborn v. Sylvester*, 132 N.W.2d 249, 255 (Wisc. Sup. Ct., 1965):

> "Since the basic principle of representative government is that the weight of a citizen's vote cannot be made to depend on where he lives, then county boards or units of representative government should not be constitutionally immune from the requirements of the 14th Amendment . . ."

Other cases of like import are: *Miller v. Board of Supervisors*, 405 P.2d 857 (Cal. Sup. Ct.), *Montgomery County Council v. Garrott*, 222 A.2d 164 (Md. Sup. Ct.), *Hanlon v. Towey*, 142 N.W.2d 741 (Minn. Sup. Ct.), *Armentrout v. Schooler*, 409 S.W.2d 138 (Mo. Sup. Ct.), *Seaman v. Tedourich*, 209 N.E.2d 778 (N. Y. Ct. App.), *Bailey v. Jones*, 139 N.W. 385 (S.D. Sup. Ct.), *Ellis v. Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D. Md.), *Delozier v. Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Penn.) and *Strickland v. Burns*, 256 F. Supp. 824 (M.D. Tenn.).

Each of these decisions supports the proposition that the equal-population principle should be extended to subordinate units of government; with reference to the requirements of the Equal Protection Clause, each cogently reasons that no material difference exists between the right to vote for State Legislators and members of local governing bodies.

In Midland County, more than 95 percent of the people elect, and are represented by, one Commissioner; less than 5 percent of the people elect, and are represented by, three Commissioners. The voice and the vote of the many have been diluted and debased; the will of the many has been subordinated to the will of the few. County government is in the hands of a small minority of the County's citizens. The testimony of one of this minority's representatives, Respondent Bryant, would indicate that it is there to stay unless wrest away by the stronger hand of constitutional principle.

When asked if he felt that a majority of the Commissioners' Court must be composed of rural representatives, he replied, "Yes sir, I do." And when asked if he felt the only way this majority representation of rural interests on the Commissioners' Court could be maintained was by dividing the County into Commissioners' Precincts in such a fashion that the vast majority of people was placed in one Precinct segregated from the other three, he replied, "Yes sir, that's correct" (R. 126).

Obviously, arbitrary power has challenged the rule of the Constitution; they are antagonistic and incompatible forces and one or the other must perish. Certainly, there can be no doubt as to which it must be.

> "The right to vote on a basis of reasonable equality with other citizens is a fundamental and personal right essential to the preservation of self-government. Fundamental rights may be lost by dilution as well as by outright denial. To whatever extent a citizen is disfranchised by denying him reasonable equality of representation, to that extent he endures taxation without representation and the democratic process itself fails to register the full weight of his judgment

as a citizen." *State v. Hetherington*, 61 N.W.2d 737, (Minn. Sup. Ct.).

Petitioner submits that consistent and logical constitutional construction compels the extension of the "one man, one vote" principle to the elective process in Midland County. Though smaller in size and local in nature, the Commissioners' Court is, nonetheless, representative government. As interpreted by this Court, the Equal Protection Clause requires that State legislators be elected from districts substantially equal in population; reason and fairness would direct that the same standards should apply to the election of the members of the Commissioners' Court of Midland County, Texas, which exercises powers delegated to it by the State legislature over a wide range of subjects. The right of the citizens should be the same regardless of whether the power is exercised directly by the Legislature or by a subordinate elective body.

CONCLUSION

The jurisdiction and power to enforce the rights granted to Petitioner by the Fourteenth Amendment are vested in this Court. Petitioner has no other remedy. The Equal Protection Clause as construed by this Court entitles Petitioner to the relief sought.

Wherefore, Premises considered, Petitioner prays that the decision of the Supreme Court of Texas be reversed and that this cause be remanded with instructions that the Commissioners' Court of Midland County, Texas, redivide such County into Commissioners' Precincts having substantially the same number of people and with the further instructions that until such time as such redivision is accomplished, each member of the Commissioners' Court

APPENDIX

CONSTITUTION OF THE UNITED STATES

UNITED STATES CONSTITUTION, Amendment XIV, § 1:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES OF THE UNITED STATES

28 U.S.C. Sec. 1257 (3)

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

CONSTITUTION OF THE STATE OF TEXAS

Art. I, § 3. Equal rights

Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Art. I, § 19. Deprivation of life, liberty, etc.; due course of law

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Art. V, § 18. Division of counties into precincts; election of constable and justice of the peace; county commissioners and county commissioners court

Sec. 18. Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. Divisions shall be made by the Commissioners Court provided for by this Constitution. In each such precinct there shall be elected one Justice of the Peace and one Constable, each of whom shall hold his office for four years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8,000 or more inhabitants, there shall be elected two Justices of the Peace. Each county shall in like manner be divided into four commissioners precincts in each of which there shall be elected by the qualified voters thereof one County

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Commissioner, who shall hold his office for four years and until his successor shall be elected and qualified. The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed. As amended Nov. 2, 1954.

Art. VIII, § 9. Maximum state tax; county, city and town levies; local road laws

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five (35) cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five (25) cents for city or county purposes, and not exceeding fifteen (15) cents for roads and bridges, and not exceeding fifteen (15) cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the Amendment September 25, 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five (25) cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; provided, however, that the Commissioners Court in any county may re-allocate the foregoing county taxes by changing the rates provided for any of the foregoing purposes by either increasing or decreasing the same, but in no event shall the total of said foregoing county taxes exceed eighty (80) cents on the one hundred dollars valuation, in any one year; provided further,

that before the said Commissioners Court may make such re-allocations and changes in said county taxes that the same shall be submitted to the qualified property tax paying voters of such county at a general or special election, and shall be approved by a majority of the qualified property tax paying voters, voting in such election; and, provided further, that if and when such re-allocations and changes in the aforesaid county taxes have been approved by the qualified property tax paying voters of any county, as herein provided, such re-allocations and changes shall remain in force and effect for a period of six (6) years from the date of the election at which the same shall be approved, unless the same again shall have been changed by a majority vote of the qualified property tax paying voters of such county, voting on the proposition, after submission by the Commissioners Court at a general or special election for that purpose; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen (15) cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. This section shall not be construed as a limitation of powers delegated to counties, cities or towns by any other section or sections of this Constitution. As amended Aug. 14, 1883, proclamation Sept. 25, 1883; Nov. 4, 1890, proclamation Dec. 19, 1890; Nov. 6, 1906, proclamation Jan. 7, 1907; Nov. 7, 1944.

Art. VIII, § 18. Equalization of valuations; classification of lands

Sec. 18. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (the County Commissioner's Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

Art. XVI, § 61. Compensation of district, county and precinct officers; salary or fee basis; disposition of fees

Sec. 61. All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be compensated on a salary basis. In all counties in this State, the Commissioners Courts shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts, to compensate all constables, deputy constables and precinct law enforcement officers on a salary basis beginning January 1, 1949; and in counties having a population of less than twenty thousand (20,000), according to the then last preceding Federal Census, the Commissioners Courts shall also have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts to compensate all sheriffs, deputy sheriffs, county law enforcement officers including sheriffs who also perform the duties of assessor and collector of taxes,

and their deputies, on a salary basis beginning January 1, 1949.

All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners Court may direct. All Notaries Public, county surveyors and public weighers shall continue to be compensated on a fee basis. Added Aug. 24, 1935, as amended Nov. 2, 1948.

STATUTES OF THE STATE OF TEXAS

Art. 689a—9. V.T.C.S.

The County Judge shall serve as budget officer for the Commissioners' Court in each county, and during the month of July of each year he, assisted by the County Auditor or by the County Clerk, shall prepare a budget to cover all proposed expenditures of the county government for the succeeding year. Such budget shall be carefully itemized so as to make as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget must also be so prepared as to show as definitely as possible each of the various projects for which appropriations are set up in the budget, and the estimated amount of money carried in the budget for each of such projects. The budget shall also contain a complete financial statement of the

county, showing all outstanding obligations of the county, the cash on hand to the credit of each and every fund of the county government, the funds received from all sources during the previous year, the funds available from all sources during the ensuing year, the estimated revenues available to cover the proposed budget and the estimated rate of tax which will be required. Acts 1931, 42nd Leg., p. 339, ch. 206, § 10.

Art. 689a—9a. V.T.C.S.

The County Judge in preparing the budget to cover all proposed expenditures of the county government for the succeeding year shall estimate the revenue to be derived from taxes to be levied and collected during such succeeding year, and such revenue shall be included in the estimated revenues available to cover the proposed budget. Acts 1931, 42nd Leg., p. 339, ch. 206, § 10a, added Acts 1953, 53rd Leg., p. 1056, ch. 439, § 1.

Art. 689a—10. V.T.C.S.

When the County Judge has completed the budget for the county, a copy of it shall be filed with the clerk of the County Court, and it shall be available for the inspection of any taxpayer. Acts 1931, 42nd Leg., p. 339, ch. 206, § 11.

Art. 689a—11. V.T.C.S.

The Commissioners' Court in each county shall each year provide for a public hearing on the county budget—which hearing shall take place on some date to be named by the Commissioners' Court subsequent to August 15th and prior to the levy of taxes by said Commissioners'

Court. Public notice shall be given that on said date of hearing the budget as prepared by the County Judge will be considered by the Commissioners' Court. Said notice shall name the hour, the date and the place where the hearing shall be conducted. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the County Judge shall be acted upon by the Commissioners' Court. The Court shall have authority to make such changes in the budget as in their judgment the law warrants and the interest of the taxpayers demand. When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendments to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted.

The County Judge shall, after the adoption of the county budget and prior to October 15th of each year, file with the State Comptroller at Austin, Texas, a true and correct summarized statement of the adopted budget, which statement shall show the total amount adopted for each of the several divisions of the county's activities and

outstanding obligations together with true and exact copies of any revenue estimates, financial statements and balance sheets required to be contained in said budgets, and the correctness of said copies shall be sworn to by the County Judge and County Auditor, and in counties which have no County Auditor, by the County Clerk. The State Comptroller shall note the date on which statements are filed with him, and preserve them for not less than two (2) years after the October 1st filing date. Provided, however, that in all counties of this State containing a population in excess of three hundred and fifty thousand (350,000), according to the last preceding United States census, the provisions hereof shall not apply to the making of such county budgets, and in such counties all matters pertaining to the county budget shall be governed by existing law. Acts 1931, 42nd Leg., p. 339, ch. 206, § 12.

Art. 796. V.T.C.S.

Any county or any city incorporated under the general laws which may suffer great destruction or damage of property or depreciation of the value of taxable property from storms, floods or other disasters, may fund, refund, compromise or settle its valid outstanding bonded and floating indebtedness. Acts 1901, S.S. p. 18.

Art. 797. V.T.C.S.

For such purpose, the bonds of the county or city may be issued by the governing body without a vote of the tax payers in denominations of not less than one hundred, nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or settlement, not to exceed the amount unpaid on the outstanding indebtedness. Such bonds may be exchanged for bonds or

other evidences of outstanding indebtedness of such county or city, or may be sold and the proceeds applied in the purchase of outstanding bonds or the payment of outstanding floating indebtedness, and may be exchanged or sold from time to time in such amounts as may be required for refunding said outstanding bonds and funding or settling said floating debts. Id.

Art. 1015c—1. V.T.C.S.

Purpose

Section 1. The purpose of this Act is to promote the establishment, operation and support of public recreational facilities and programs by local government units of this State either singly or jointly.

Definitions

Sec. 2. As used in this Act:

(a) The term "governing body" means any city council, city commission, county commissioners court, or other body acting in lieu thereof.

(b) The term "governmental unit" means any city, town, or county.

(c) The term "board" means any board, commission, committee or council appointed or designated to carry out the provisions of this Act.

Recreational powers

Sec. 3. Any governmental unit may establish, provide, acquire, maintain, construct, equip, operate, and supervise recreational facilities and programs, either singly or jointly in cooperation with one (1) or more other governmental units.

Elections

Sec. 4. Any governmental unit may submit the question of whether it shall exercise the powers conferred in Section 3 to an election of the qualified electors of such unit.

Finances

Sec. 5. Any governmental unit may pay costs and expenses of carrying out the provisions of this Act from the general revenues of the unit, or from other revenues now provided by law for the establishment or the operation of parks and recreational facilities. Governmental units jointly exercising the powers conferred in Section 3 may agree upon the manner and method of division of costs and expenses.

Administration

Sec. 6. A governing body may administer and operate recreational facilities and programs through a bureau or department of recreation or through a board established jointly with another governing body. The Board shall adopt and promulgate rules and regulations for administration and operation of recreational facilities and programs in its charge subject to the approval of the establishing governing bodies.

Acceptance of gifts

Sec. 7. Any governmental unit may accept any grant, lease, loan or devise of real estate, or gift or bequest of money, either principal or income, or any other personal property for either temporary or permanent use for the establishment, operation, or support of public recreation facilities and programs.

Limitations

Sec. 8. This Act shall be cumulative as to all laws, ordinances, and charter provisions relating to public recreation and parks. Acts 1955, 54th Leg., p. 1179, ch. 458.

Art. 1269h. V.T.C.S.

Section 1. A—The governing body of any incorporated city in this State may receive through gift or dedication, and is hereby empowered to acquire, by purchase without condemnation or by purchase through condemnation proceedings, and thereafter maintain and operate as an airport, or lease, or sell, to the Federal Government, tracts of land either within or without the corporate limits of such city and within the county in which such city is situated, and the Commissioners Court of any county may likewise acquire, maintain and operate for like purpose tracts of land within the limits of the county.

Acts 1941, 47th Leg., ch. 51, p. 65.

Article 1572. V.T.C.S.

Each county which now exists or which may be hereafter established, shall be a body corporate and politic. P.D. 1044.

Art. 1581e. V.T.C.S.

Section 1. All counties in this State shall have the right of eminent domain to condemn and acquire real property and easements and right-of-ways over and through all public and private lands for the making and digging of canals, drains, levees and improvements in the county for flood control purposes and for drainage as related to flood control, and for providing necessary

outlets for waters in such counties. No appeal from the finding and assessment of damages by the Special Commissioners appointed for that purpose shall suspend the work for which the land, right-of-way, easement, or other property is acquired. Where, in the judgment of the Commissioners Court, the acquisition of the fee in the land is necessary, condemnation of the fee title may be had; provided, however, that the counties shall not have authority to condemn the fee of, as distinguished from an easement or right-of-way over, across or upon, any property lawfully used or occupied by any public utility, railroad, canal, levee or other person, concern, corporation or body politic devoting its property to a public use.

Sec. 2. The proceedings with respect to condemning lands or interests therein, or other property, for the uses above specified shall be controlled by the statutes regulating such proceedings by counties in other cases, as provided in Article 3264, Revised Statutes of Texas, 1925, et seq.

Sec. 3. The Commissioners Court of any county in this State may contract and agree with any other county, political subdivision, governmental unit, or municipal corporation for the joint acquisition of right-of-ways, or joint construction or maintenance of canals, drains, levees and other improvements for flood control, and drainage as related to flood control, and for making necessary outlets, and maintaining them. Such contracts shall contain such terms, provisions and details as the governing bodies of the respective political subdivisions shall determine to be necessary under all of the facts and circumstances, and may provide that such works may be maintained jointly, or by either one (1) of such political subdivisions,

under its exclusive direction and control, with such contributions toward the expense of such maintenance as the other county or political subdivision may agree to make.

Sec. 3a. Where, in the opinion of the Court, it becomes necessary to condemn an easement, as against persons who also have the power of eminent domain, all expenses involved in the acquisition, construction, and maintenance of the flood control or drainage project shall be the obligation of the county, flood control district or drainage district, as the case may be. Acts 1949, 51st Leg., p. 759, ch. 407.

Art. 1659. V.T.C.S.

Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise the bidding at least once a week for two consecutive weeks in at least one daily newspaper published and circulated in the county. The advertisements shall state where the specifications are to be found, and shall give the time and place for receiving the bids. Publication of the first advertisement shall precede the last day for receiving bids by at least 14 days. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satis-

factory to the said judge or county commissioners, the auditor shall reject said bids and readvertise for new bids. In cases of emergency, purchases not in excess of $300 may be made upon requisition to be approved by the commissioners court without advertising for competitive bids. As amended Acts 1963, 58th Leg., p. 115, ch. 66, § 1; Acts 1965, 59th Leg., p. 944, ch. 458, § 1.

Art. 1677. V.T.C.S.

The commissioners court of any county may establish, maintain, and operate within their respective counties, county free libraries in the manner and with the functions prescribed in this title. The said court shall also have the power and authority to establish in co-operation with another county or counties a joint free county library for the benefit of the co-operative counties. Acts 2nd C.S. 1919, p. 219.

Art. 2339. V.T.C.S.

Each county shall be divided into four commissioners precincts, and one commissioner shall be elected biennially in each precinct, and each commissioner shall hold his office for two years. Const. art. 5, sec. 18; Acts 1876, p. 51, sec. 3; G.L. vol. 8, p. 887.

Art. 2342. V.T.C.S.

The several commissioners, together with the county judge, shall compose the "Commissioners Court," and the county judge, when present, shall be the presiding officer of said court. Const. art. 5, sec. 18; Acts 1876, p. 51; G.L. vol. 8, p. 887.

Art. 2350(2). V.T.C.S.

The Commissioners Court at its first regular meeting after the effective date of this Act and thereafter at the first regular meeting of each year shall, by order duly made and entered upon the minutes of said Court, fix the salaries of the County Commissioners for such year, within the limits as provided for in this Act. Acts 1945, 49th Leg., p. 280, ch. 204, § 3.

Art. 2351. V.T.C.S.

Each commissioners court shall:

1. Lay off their respective counties into precincts, not less than four, and not more than eight, for the election of justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held; and shall establish justices precincts and justices courts for the unorganized counties as provided by law.

2. Establish public ferries whenever the public interest may require.

3. Lay out and establish, change and discontinue public roads and highways.

4. Build bridges and keep them in repair.

5. Appoint road overseers and apportion hands.

6. Exercise general control over all roads, highways, ferries and bridges in their counties.

7. Provide and keep in repair court houses, jails and all necessary public buildings.

8. Provide for the protection, preservation and disposi-

tion of all lands granted to the county for education or schools.

9. Provide seals required by law for the district and county courts.

10. Audit and settle all accounts against the county and direct their payment.

11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year.

12. Provide for the burial of paupers.

13. Punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.

14. Issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed by such court and to enforce its jurisdiction.

15. Said court shall have all such powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law. Const. art. 5; Acts 1876, p. 51; G.L. vol. 8; p. 887; Acts 1885, p. 89; G.L. vol. 9, p. 708; Acts 1911, p. 236.

16. Said Court shall have the authority to use county road machinery and funds from the General Fund or Road and Bridge Funds in cleaning streams and in aid-

ing flood control when such improvements are deemed to be of aid of the county in the maintenance and the building of county roads, in counties having a population of from nineteen thousand, eight hundred and fifty (19,850) to nineteen thousand, eight hundred and ninety-five (19,895) according to the last Federal Census. Added Acts 1939, 46th Leg., Spec. L., p. 588, § 1.

17. a. The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is hereby empowered to create a revolving fund or funds and to make appropriations thereto out of the general revenue of such county; and such revolving fund shall be used by such county only in cooperation with the United States Department of Agriculture to aid and assist in carrying out the purposes and provisions of an Act of Congress of the United States pertaining to the distribution of commodities to persons in need of assistance, under the direction of the United States Department of Agriculture; provided, however, that the county shall have on hand at all times either the moneys appropriated to such revolving fund or funds or the equivalent thereof in stamps issued by the United States Department of Agriculture under the Food and/or Cotton Stamp Plan, which stamps are convertible into cash at any time.

b. In such counties of this State exercising the powers herein granted, an issuing officer shall be appointed to carry out the provisions of this Act and to administer the funds herein appropriated. Such issuing officer shall be a citizen of the State of Texas and appointed by the County Judge of such County subject to the approval of the Commissioners Court thereof. He shall be required to

furnish a good and sufficient surety bond in such amount and upon such terms and conditions as may be required by the Commissioners Court and the United States Department of Agriculture. Such issuing officer shall receive a salary, to be paid out of the general fund or any other fund of the county, except constitutional funds, not otherwise appropriated, not to exceed Two Hundred Dollars ($200) per month, and may appoint such cashiers and other assistants as may be authorized by such Court. The premiums of all bonds which may be required of such issuing officer, cashiers or other assistants, shall be paid by the Commissioners Court out of any available funds therefor belonging to such county.

c. Provided however the powers herein granted to such counties may be exercised by two (2) or more counties in conjunction with each other and in cooperation with the United States Department of Agriculture. And when such powers are exercised by two (2) or more counties jointly, the County Judges of such counties shall appoint the issuing officer, fix such appointee's bond and to do all other things necessary to cooperate with the United States Department of Agriculture in the same and like manner as is herein granted to any one county of this State.

d. Provided that such Commissioners Courts of such counties may cooperate with any incorporated city or town within such county or counties on such conditions and requirements as may be promulgated by such Commissioners Court or Courts.

e. Whenever any county herein authorized to create such a revolving fund ceases to participate therein the issuing officer appointed under the provisions hereof shall

forthwith reduce all stamps to their equivalent in money and return such moneys then on hand to the fund from which same was originally appropriated and render a full account of his administration thereof to the Commissioners Court or Courts as the case may be. Added Acts 1941, 47th Leg., p. 204, ch. 146, § 1.

18(a) The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is empowered in all cases where said county has heretofore acquired, or may hereafter acquire, land for an airport through purchase or gift from any person or source whatever, including the Federal Government, or any agency thereof, to lease said land and/or the facilities thereof, or any part thereof to any person or corporation upon such terms as the Commissioners Court shall deem advisable for airport purposes, or other purposes, provided any such lease is not inhibited by the terms of the grant to such county. Said counties through such Commissioners Courts are also hereby expressly authorized and empowered to contract with reference to oil, gas or other minerals or natural resources which may be vested in said counties by virtue of the ownership of such airports and to execute and deliver to any person upon such conditions and for such consideration, including oil payments, gas payments, overriding royalties, etc. as the Commissioners Court may deem advisable, mineral deeds or mineral leases of all or any part of said minerals, or the rights thereto, which are vested in the county and to generally contract for the exploration and development of the minerals underlying said land or any part thereof.

(b) The proceeds from the sale of any minerals or mineral rights, or the consideration for the execution of any

mineral leases, including cash bonuses, delay rentals and royalties, need not be devoted to the maintenance, upkeep, improvement and operation of such airport, but may be expended by the Commissioners Court for any lawful purpose.

(c) The proceeds received, or to be received from any person from the lease of the surface of said land, or from the lease of the facilities thereof, or any part thereof, for purposes other than airport purposes, or for purposes other than those relating to the operation of an airport, may likewise be expended by the Commissioners Court for any lawful purpose.

(d) The proceeds received, or to be received, from any person for any lease of the surface of said land, or for the lease of the facilities thereof, or any part thereof, for airport purposes, or for purposes related to the operation of an airport, shall be devoted, first, to the maintenance, upkeep, improvement and operation of such airport and the facilities, structures and improvements thereof, but any surplus remaining at the close of any fiscal year of operation may be expended by such Commissioners Court for any lawful purpose.

(e) The proceeds received, or to be received, from any charges for the use of said airport for airport purposes shall be devoted, first, to the maintenance, upkeep, improvement and operation of such airport and the facilities, structures and improvements thereof, but any surplus remaining at the close of the fiscal year of operation may be expended by the Commissioners Court for any lawful purpose. Added Acts 1949, 51st Leg., p. 503, ch. 276, § 1.

19(a) The Commissioners Court of each county of this State, in addition to the powers already conferred upon it by law, is expressly authorized and empowered to contract with the United States Government, or with any agency thereof, and particularly with the Federal Works Administrator, the Housing and Home Finance Administrator, and/or the National Housing Administrator, or their successor or successors, for the acquisition of any land, or interest in land, in such county, owned by the United States Government, or any agency thereof, and for the acquisition of any temporary housing on land which the United States Government, or any agency thereof, may own or control; and each such county in this State is authorized and empowered to acquire by purchase, gift or otherwise, any such land and any such housing from the United States Government, or any agency thereof, and to own and operate such land and housing.

(b) Each Commissioners Court in this State is authorized and empowered to adopt a resolution or order requesting the transfer to said county of any such land or housing, or interest therein, which the United States Government, or any agency thereof, is now, or may be hereafter, authorized to convey or transfer to such county, and each such county, through its Commissioners Court, is expressly authorized and empowered to bind itself to comply with any and all terms and conditions which the United States Government, or any agency thereof, may impose as a prerequisite to the transfer or conveyance of any of such land or housing, or either of them, or any interest therein; and any instrument or deed conveying to said county any such land or any such housing, or any interest therein, may contain any conditions and pro-

visions, covenants and warranties which may be prescribed by the United States Government, or any agency thereof, and agreed upon by said county acting through its Commissioners Court, provided that such terms and conditions are not inhibited by the Constitution of the State of Texas.

(c) For the purpose of purchasing or otherwise acquiring said lands or housing, or both, and improving, enlarging, extending or repairing the same, the Commissioners Court of any county may issue negotiable bonds of the county and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and the levying and collection of such taxes to be exercised in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of Texas, 1925, as amended.

(d) Counties are expressly authorized and empowered to lease or rent any lands, housing, or facilities acquired by them pursuant to this Act and to establish and revise the rent or charges therefor; to arrange or contract for the furnishing by any person or agency, public or private, of services, or facilities for, or in connection with, any of such lands, housing or facilities, or the occupants thereof;

(e) Said counties are further authorized to sell and convey all or any part of the land or housing so acquired or to lease or exchange same; and said counties are further expressly authorized to execute oil, gas or mineral leases covering all or any part of said lands so acquired on such terms and conditions as may be deemed advisable by the Commissioners Court and for such consideration, including oil payments, gas payments, overriding royalties, etc. as may be deemed advisable; and such counties, through

their Commissioners Courts, are expressly authorized and empowered to execute conveyances of minerals or mineral rights, and to generally contract for the exploration and development of the minerals underlying said land, if any, or any part thereof. Added Acts 1949, 51st Leg., p. 501, ch. 275, § 1.

20. The Commissioners Court of each county of this State, in addition to the powers already conferred on it by law, is authorized and empowered in all cases where such county has acquired a water supply from subterranean waters for county purposes, to sell, contract to sell and deliver any or all of such water which is not needed for county purposes to any public or municipal corporation, or political subdivision of this State, including any water control and improvement district, or fresh water supply district now created and existing, or which may hereafter be created under the laws of this State; any such water sold or contracted to be sold and delivered to any such public or municipal corporation or political subdivision of this State, may be used or re-sold for any lawful purpose; and said Commissioners Court shall have the right to fix and determine the rate or rates at which such water shall be sold to any such public or municipal corporation or political subdivision of this State, and to enter into contracts to sell and supply such water at such determined rate or rates for any term of years not exceeding forty (40); and all monies received by the county from the sale of such water shall be placed to the credit of the General Fund of the county and may be expended for general county purposes as now or hereafter permitted by law. Added Acts 1950, 51st Leg., 1st C.S., p. 87, ch. 24, § 1.

Art. 2351a—1. V.T.C.S.

Section 1. The Commissioners Court in all counties of this State shall be authorized to furnish fire protection and fire-fighting equipment to the citizens of such county residing outside the city limits of any incorporated city, town or village within the county and/or adjoining counties. The Commissioners Court shall have the authority to purchase fire trucks and other fire-fighting equipment by first advertising and receiving bids thereon, and is hereby authorized to issue time warrants of the county and to levy and collect taxes to pay the interest and principal thereon as provided by law. The Commissioners Court of any county of this State shall also have the authority to enter into contracts with any city, town or village within the county and/or adjoining counties, upon such terms and conditions as shall be agreed upon between the Commissioners Court and the governing body of such city, town or village, for the use of the fire trucks and other fire-fighting equipment of the city, town or village. It is specifically provided that the acts of any person or persons while fighting fires, traveling to or from fires, or in any manner furnishing fire protection to the citizens of a county outside the city limits of any city, town or village, shall be considered as the acts of agents of the county in all respects, notwithstanding such person or persons may be regular employees or firemen of a city, town or village. No city, town or village within a county and/or adjoining counties shall be held liable for the acts of any of its employees while engaged in fighting fires outside the city limits pursuant to any contract theretofore entered into between the Commissioners Court of the county and the governing body of the city, town or village. Acts 1941,

47th Leg., p. 567, ch. 360, § 1; Acts 1961, 57th Leg., p. 492, ch. 234, § 1.

Art. 2351f. V.T.C.S.

Section 1. Commissioners Courts of the counties of this State are hereby authorized to spend moneys in the general fund for the purpose of maintenance and upkeep of public cemeteries in their respective counties.

Sec. 2. If a part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Act and the Legislature hereby declares that it would have enacted, and does here now enact, such remaining portion despite any such invalidity. Acts 1951, 52nd Leg., p. 437, ch. 271.

Art. 2351g—1. V.T.C.S.

Section 1. Commissioners Courts of the counties of the State of Texas, are hereby authorized on behalf of the counties, to acquire by easement or in fee simple, lands on which to locate public dumping and garbage disposal grounds, and to expend moneys out of the General Fund for the purpose of acquiring such easements or fee simple title, either by purchase or by condemnation.

Sec. 2. The location of such dumping or garbage disposal grounds, and the consideration to be paid therefor, shall be a matter committed to the sound discretion of the Commissioners Courts, taking into consideration the convenience of the people to be served, and the general health of, and the annoyance to, the community to be served by such dumping and garbage disposal grounds.

Sec. 3. Counties are hereby given the right of eminent domain in acquiring such grounds in accordance with the provisions of the eminent domain Statutes of the State of Texas; provided, however, that counties shall not have the right of eminent domain in acquiring such grounds as against corporations which also have the right of eminent domain by Statute.

Sec. 4. Chapter 464, Acts of the 54th Legislature, Regular Session, 1955 (codified as Article 2351g, Vernon's Texas Civil Statutes), is repealed. Acts 1965, 59th Leg., p. 1019, ch. 503.

Art. 2352. V.T.C.S.

Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the Constitution, September 25, A.D. 1883, and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the Constitution otherwise provided. They may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollar valuation of the property subject to taxation, under the limitations and in the manner provided for in Article 8, Sec. 9, of the Constitution and in pursuance of the laws relating thereto. Const. art. 8; sec. 9; Amendment 1899.

Art. 2352d. V.T.C.S.

Appropriation

Section 1. All counties in the State of Texas may appropriate from the General Fund of said counties an amount not exceeding Five Cents (5¢) on the One Hundred Dollars ($100) assessed valuation for the purpose of advertising and promoting the growth and development of such county; providing that before the Commissioners Court of any county may appropriate any sums for such purpose, the qualified taxpaying voters of said county shall, by a majority vote of the persons voting at such election, authorize the County Commissioners to thereafter appropriate not to exceed Five Cents (5¢) on the One Hundred Dollars ($100) assessed valuation.

Board of Development Fund; budget

Sec. 2. The amount of money approved by the Commissioners Court for the Board of Development shall constitute a separate fund to be known as the Board of Development Fund and shall not be used for any other purpose. Each claim against the Board of Development shall be authorized and approved by the Board of Development before presented for payment and after such approval, shall be presented to the Commissioners Court and acted upon as all other claims against the Commissioners Court.

The Board of Development hereinafter provided for shall annually in advance, prepare and submit to the Commissioners Court a budget for the ensuing year in the same manner as required of counties. The money appropriated annually shall be governed by the discretion of the Commissioners Court, but in no event shall said sum

Sec. 3. Counties are hereby given the right of eminent domain in acquiring such grounds in accordance with the provisions of the eminent domain Statutes of the State of Texas; provided, however, that counties shall not have the right of eminent domain in acquiring such grounds as against corporations which also have the right of eminent domain by Statute.

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Board of Development Fund; budget

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The Board of Development hereinafter provided for shall annually in advance, prepare and submit to the Commissioners Court a budget for the ensuing year in the same manner as required of counties. The money appropriated annually shall be governed by the discretion of the Commissioners Court, but in no event shall said sum

may, when necessary, provide buildings, rooms, or apartments at the county seat, other than the courthouse, for holding the sessions of the County Courts, District Courts, and for carrying on such other public business as may be authorized by the Commissioners Court, and may lease or rent such part of any such buildings, rooms, or apartments as may not be necessary for public use. Acts 1941, 47th Leg., p. 643, ch. 388.

Art. 2372d—2. V.T.C.S.

Section 1. The Commissioners Court of any county is hereby authorized to purchase, build, or construct buildings and other permanent improvements to be used for annual exhibits of horticultural and agricultural products, and/or livestock and mineral products of the county, and for a coliseum and auditorium. Such building or buildings and other permanent improvements may be located in the county at such place or places as the Commissioners Court may determine. Payment for such building or buildings and other permanent improvements shall be made from the Constitutional Permanent Improvement Fund. As amended Acts 1959, 56th Leg., 3rd C.S., p. 380, ch. 5, § 1.

ELECTION CODE

Art. 2.04.

(a) Each county shall be divided into convenient election precincts by the Commissioners Court of the county, of which precincts shall be differently numbered and described by natural or artificial boundaries or survey lines by an order entered upon the minutes of the Court. At any July or August term, the Court may make such

changes in the election precincts as they deem proper, by such order entered upon the minutes of the Court. When such an order is entered, they shall immediately thereafter publish in some newspaper in the county for three consecutive weeks a notice of the entry of such order, giving a brief description in general terms of the changes made, without the necessity of including in such notice the field notes or other detailed description of the precinct boundaries. If there be no newspaper in the county, then a copy of such order shall be posted in some public place in each election precinct in the county which is affected by the order.

(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more Congressional Districts or State Senatorial Districts or State Representative Districts, nor out of the parts of two or more such Districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the Commissioners Court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this Section. No election precinct shall have resident therein more than two thousand voters as ascertained by the current certified lists of qualified voters; provided, however, that in precincts in which voting machines have been adopted for use, the maximum number of voters shall be three thousand.

(c) In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct

unless there shall reside in said ward more than two thousand qualified voters. In such cities and towns, no precinct shall be made out of parts of two wards; and no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed *within the city* or town, and the finding of the Commissioners Court shall be conclusive.

(d) In cities, towns and villages of less than ten thousand inhabitants, election precincts may be formed without regard to the wards or the corporate limits of the city, town or village.

(e) Changes in election precincts shall not become operate in the holding of elections until the beginning of the following voting year. The Commissioners Court shall cause to be made out and delivered to the County Tax Collector before the first day of each September a certified copy of such last order for the year following; provided, however, that any order entered during the month of September, as provided in Paragraph (b) of this Section, shall be delivered to the Tax Collector forthwith. As amended Acts 1963, 58th Leg., p. 1017, ch. 424, § 7; Acts 1965. 59th Leg., p. 1552, ch. 678, § 1, emerg. eff. June 18, 1965.

Art. 3.01.

(a) For county elections. The commissioners court at its February term shall appoint from among the citizens

of each election precinct one qualified voter as presiding judge of elections held at the expense of the county in that precinct and one qualified voter as alternate presiding judge, each of whom shall continue to act until his successor is appointed. Whenever a vacancy arises in either of such offices, the commissioners court may fill the vacancy at any regular or special term of court. All orders appointing judges and alternates shall be entered of record. Each presiding judge shall appoint two qualified voters, who are residents of the precinct, to serve as election clerks, and shall appoint for each election as many additional clerks as he deems necessary for the proper conduct of the election, not to exceed the maximum number authorized by the commissioners court. The commissioners court shall fix the maximum number of clerks which may be appointed for each precinct, and may fix different maximums depending on the type of election. The clerks shall be selected from different political parties, when practicable. As amended Acts 1965, 59th Leg., p. 1552, ch. 678, § 2.

Art. 3264a. V.T.C.S.

The right of Eminent Domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way or easement is necessary in the construction of jails, courthouses, hospitals, delinquent and dependent schools, poor farms, libraries or for other public purposes, where such purpose is now or may hereafter be authorized by the Constitution or Statutes of this State.

All such condemnation proceedings shall be instituted under the direction of the commissioners' court, and in the name of the county, and the assessing of damages shall be in conformity to the Statutes of the State of Texas for condemning and acquiring right of way by railroads. That no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way, easement, etc., is sought to be acquired. In case of appeal, counties shall not be required to give bond, nor shall they be required to give bonds for costs. Acts 1925, p. 300. Acts 39th Leg., ch. 116, § 1.

Art. 4436a—1. V.T.C.S.

Cooperation by Commissioners Court and City Council

Section 1. In any county containing an incorporated city the Commissioners Court and the city council of such county and city by a suitable order of each of said bodies duly entered on the minutes of the Commissioners Court and city council may co-operate in forming a City-County Health Unit and combine health units of each political subdivision for such purpose and appropriate such funds by each of said governing bodies as may be agreed upon by the two said governing bodies to the combined health unit in such proportion as may be agreed upon between said Commissioners Court and said city council . . . . As amended Acts 1957, 55th Leg., p. 186, ch. 84.

Art. 4478. V.T.C.S.

The commissioners court of any county shall have power to establish a county hospital and to enlarge any exist-

ing hospitals for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and

for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift. Acts 1913, p. 71.

Art. 4492. V.T.C.S.

Section 1. Any Commissioners Court may cooperate with and join the proper authorities of any city having a population of ten thousand (10,000) persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said Court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such Court and city authorities.

Sec. 2. Any Commissioners Court may cooperate with and join the proper authorities of any two (2) or more cities in the establishment, building, equipment and maintenance of a hospital in said county, and to appropriate such funds as may be determined by said Court, after a joint conference with the authorities of such cities or towns, and the management of such hospital shall be under the joint control of such Court and city authorities. Acts 1913, p. 71; Acts 1953, 53rd Leg., p. 526, ch. 190, § 1.

Art. 6081f. V.T.C.S.

Section 1. All counties and all incorporated cities, towns, and villages of this State shall be authorized to operate and maintain parks.

Sec. 2. All counties and all incorporated cities, towns, and villages of this State shall be authorized to acquire or improve, or both, land for park purposes and to issue negotiable bonds therefor, and to assess, levy, and collect ad valorem taxes to pay the principal of and interest on such bonds, the authority hereby given for the issuance of such bonds and levy of such taxes to be exercised in accordance with and subject to the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of Texas of 1925, as amended.

Sec. 3. There shall be no limitation on the amount of ad valorem taxes, or the assessment, levy, and collection thereof, to pay park operation and maintenance expenses, or to pay the principal of and interest on such park bonds, except for those ad valorem tax limitations imposed by the provisions of the Constitution of the State of Texas.

Sec. 4. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict; and specifically, all ad valorem tax limitations for any park or park bond purposes contained in any laws of the State of Texas, including Article 6080 of the Revised Civil Statutes of Texas of 1925; Chapter 120, Acts of the 41st Legislature, Regular Session, 1929 (compiled as Article 6081b of Vernon's Texas Civil Statutes); Chapter 70, Acts of the 42nd Legislature, Regular Session, 1931 (compiled as Article 6081d of Vernon's Texas Civil Statutes); Chapter 227, Acts of the 58th Legislature, Regular Session,

1963 (compiled as Article 6081e of Vernon's Texas Civil Statutes); and Chapter 7, Acts of the 47th Legislature, Regular Session, 1941 (compiled as Article 6081g, of Vernon's Texas Civil Statutes) are hereby repealed and shall be of no further force or effect, but the remainder of such laws shall remain in full force and effect. Acts 1965, 59th Leg., p. 996, ch. 483.

Art. 6626. V.T.C.S.

The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or moveable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners Court of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of the partition or other subdivision through a court of record; provided that where the real estate is situated within the corporate limits or within five miles of the corporate limits of any incorporated city or town, the governing body thereof or the city planning commission, as the case may be, as provided in Article 974a, Vernon's Texas Civil Statutes, shall perform the duties hereinabove imposed upon the Commissioners Court. Acts 1846, p. 236; P.D. 5004; G.L. vol. 2, p. 1542; Acts 1931, 42nd Leg., p. 371, ch. 217, § 1; Acts 1951, 52nd Leg., p. 745, ch. 403, § 1.

Art. 6701d. V.T.C.S.

Sec. 169. (a) The County Commissioners Court of any county with respect to county highways or roads outside the limits of the right-of-way of any officially designated or marked highway, road or street of the State Highway System and outside the limits of any incorporated city, town or village shall have the same authority by order of the County Commissioners Court entered upon its records to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road or street of the State Highway System; provided that under no circumstances shall any County Commissioners Court have the authority to modify or alter the basic rule established in paragraph (a) of Section 166 nor to establish a speed limit higher than sixty (60) miles per hour. Acts 1963, 58th Leg., p. 455, ch. 161, § 1.

Art. 7345d. V.T.C.S.

In all cases where property appearing on the tax rolls, whether rendered or unrendered, current or delinquent, appears to have been assessed at a valuation greater than that placed upon other property in such locality of similar value, or out of proportion to the taxable value of such property; or where by reason of the depreciation in the value of such property an adjustment of assessed value would be equitable and expedient; or where by reason of long delinquency, the accumulated delinquent taxes, with penalties, interest, and cost aggregate such amount as to make their collection inequitable or confiscatory, the Commissioners Court of the county in which such property is situated, upon the application of the owner thereof

or his duly authorized agent, shall have the power to reopen and reconsider the original assessments. In all such cases, the Commissioners Court shall hear testimony from competent and disinterested witnesses, and may make such personal and independent investigation as may seem necessary and expedient. If, after such investigation it shall appear to the Commissioners Court that such assessments were discriminatory, or out of proportion to the taxable value of the property, or that by reason of the depreciation of value of same, or that the enforced collection of the accumulated delinquent taxes, penalties, interest, and costs would be inequitable or confiscatory, the Commissioners Court may, under its power as a Board of Equalization, make such adjustments as to assessed values of such property as it may determine to be equitable and just. And any previous fixing of values of such property for the years involved shall not be "res adjudicata" as to the particular case.

Provided, that the State Comptroller shall be furnished with a certified copy of any order passed in pursuance hereof, as shall likewise the County Assessor-Collector of Taxes, who shall make the necessary correction of his rolls. Provided further, that nothing herein shall be construed as authorizing the Commissioners Court to remit any penalty, interest, or costs that have accrued, but all such penalty, interest, and costs shall be collected on the adjusted assessment as may be authorized by existing law. Added Acts 1939, 46th Leg., p. 659, § 1.

ORDERS OF THE COMMISSIONERS COURT OF MIDLAND COUNTY

BE IT REMEMBERED THAT ON THE 31st DAY OF AUGUST A.D. 1963 AT 10:00 A.M. THERE CAME ON TO BE HELD IN THE COURTHOUSE OF MIDLAND COUNTY, TEXAS A SPECIAL SESSION OF THE HONORABLE COMMISSIONERS' COURT. THOSE PRESENT BEING:

ALVEY BRYANT, JUDGE PRO TEM
CLARK MORELAND, Commissioner Prec. 3
LOUIS OSBORNE, Commissioner, Prec. 4
ROSENELLE CHERRY, County Clerk

Due to the absence of Judge Culver and Commissioner Gideon, Motion was made by Commissioner Moreland, seconded by Commissioner Osborne, and all voting in favor to adjourn until 2:30 P.M. and hope Judge Culver and Commissioner Gideon would be able to attend the meeting.

/s/ Barbara G. Culver, Judge Pro Tem

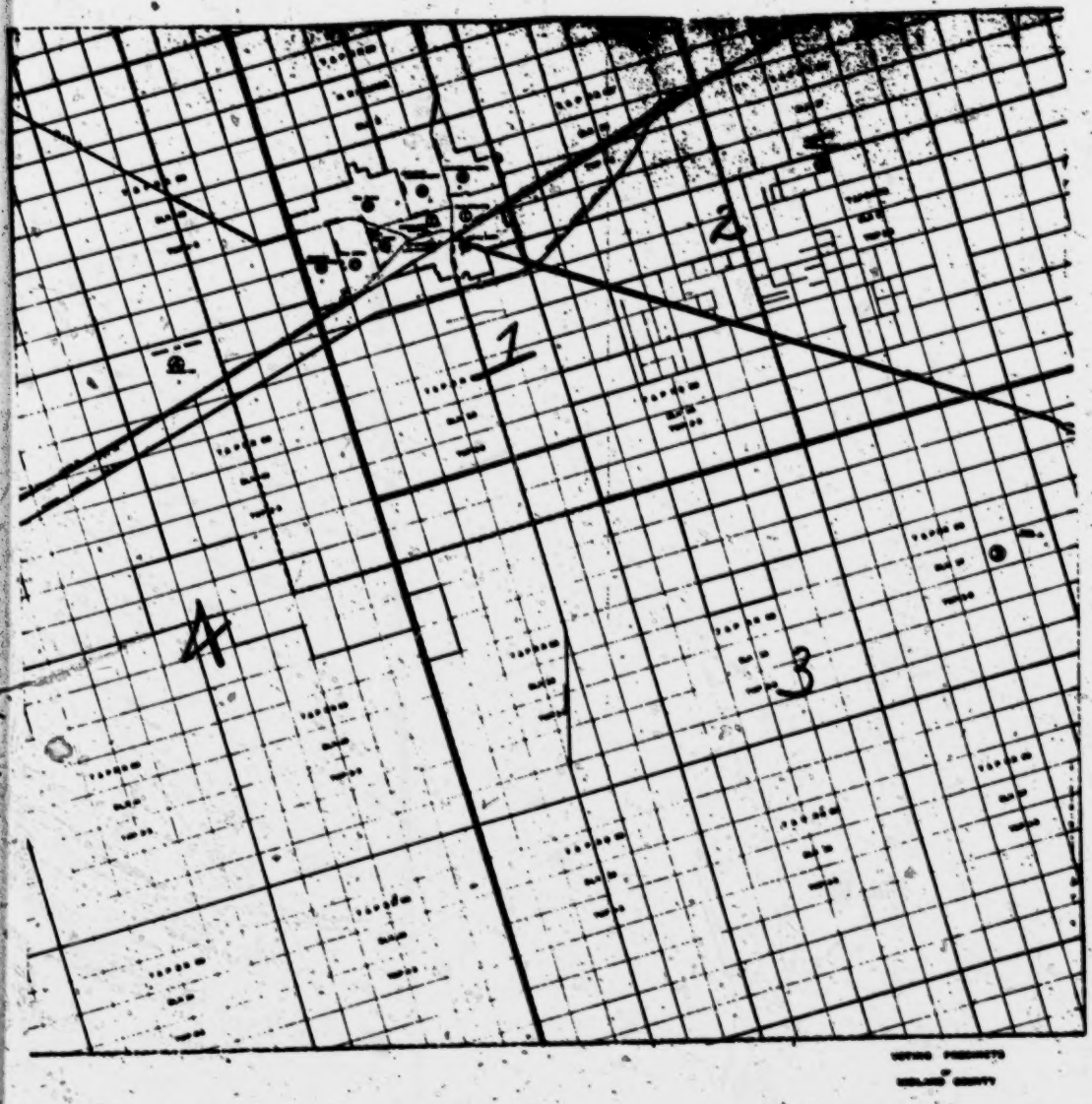
The Commissioners' Court reconvened with the following members present:

BARBARA G. CULVER, County Judge
EDWARD N. GIDEON, Commissioner, Prec. 1
ALVEY BRYANT, Commissioner, Prec. 2
CLARK MORELAND, Commissioner, Prec. 3
LOUIS OSBORNE, Commissioner, Prec. 4
ROSENELLE CHERRY, County Clerk

Commissioner Osborne submitted the following plan for redistricting Commissioners Precincts in Midland County.

1
2
3
4

Commissioner Bryant submitted his plan for re-districting Commissioners Precincts in Midland County, said plan being as follows:



After discussing both plans presented, Motion was made by Commissioner Osborne, seconded by Commissioner Moreland and all Commissioners voting in favor to adopt the plan presented by Commissioner Osborne on re-districting Commissioners Precincts in Midland County. A map of this plan appears on page 246 of these minutes.

After changing the Commissioners Precinct boundary lines it was necessary to amend the voting precincts for 1964. Motion was made by Commissioner Gideon, seconded by Commissioner Bryant, and all voting in favor to amend these voting precincts as follows:

All residents South of the Garden City highway, in Commissioners Precinct No. 2 shall be in voting precinct No. 16.

All residents North of the Garden City Highway and in Commissioners Precinct No. 2 shall be in voting precinct No. 2.

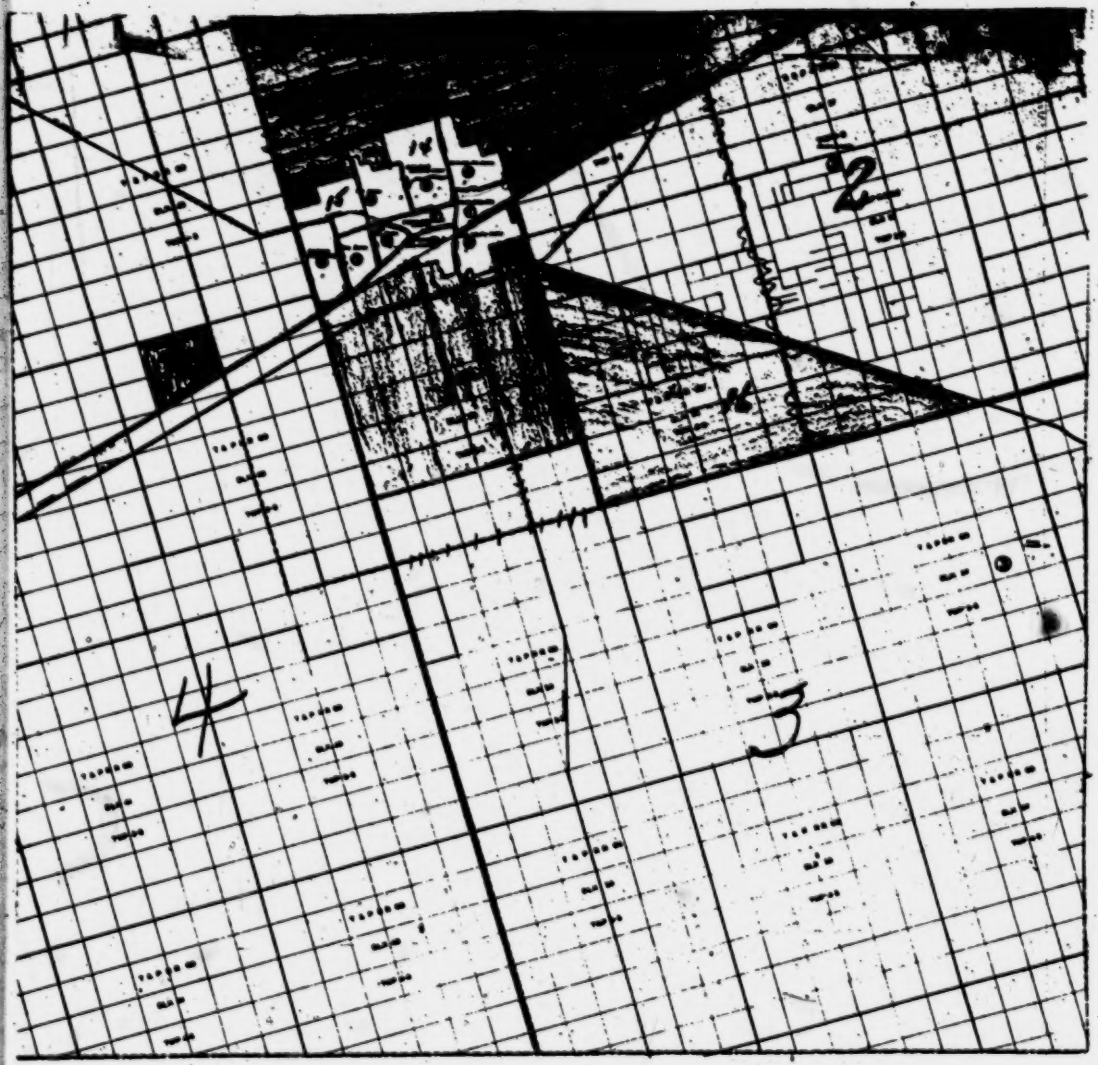
All residents South of the railroad track, outside the City Limits and in Commissioners Precinct No. 1 shall be in voting precinct No. 17.

All residents North of the Railroad track, outside the City Limits and in Commissioners Precinct No. 1 shall be in voting precinct No. 18.

All residents within the City Limits of Terminal and in Commissioners Precinct No. 4 will be in voting precinct No. 19.

All residents outside the City Limits of Terminal and in Commissioners Precinct No. 4 shall be in voting precinct No. 4.

All boundaries of Commissioners Precincts and Voting Precincts shall become effective January 1, 1964.



There being no further business to come before the court the meeting was adjourned after the foregoing minutes were read and approved.

ATTEST: /s/ Rosenelle Cherry, County Clerk

/s/ Barbara G. Culver, County Judge

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

I, Rosenelle Cherry, County Clerk and ExOfficio Clerk of the Commissioners' Court of Midland County, Texas, do herby certify that the attached and foregoing is a true and correct copy of the minutes of a meeting of said Commissioners' Court held on the 31st day of August, 1963, including an Order establishing County Commissioners' Precincts and an Order amending the boundaries of certain County Election Precincts adopted by said Commissioners' Court on such day, as same appear of record in Volume 8, Page(s) 245 thru 248, of the official minutes of said Commissioners' Court on file in my office.

WITNESS MY HAND AND THE OFFICIAL SEAL OF SAID COMMISSIONERS' COURT this 12th day of May, 1964.

(Seal)

ROSENELLE CHERRY
Rosenelle Cherry
County Clerk and Ex-Officio Clerk
of the Commissioners' Court of
Midland County, Texas

BE IT REMEMBERED THAT ON THIS THE 7th DAY OF JANUARY A.D. 1964 THERE CAME ON TO BE HELD IN THE COURTHOUSE OF MIDLAND COUNTY, TEXAS A SPECIAL SESSION OF THE HONORABLE COMMISSIONERS' COURT, THOSE PRESENT BEING:

BARBARA G. CULVER, County Judge
EDWARD N. GIDEON, Commissioner, Prec. 1
ALVEY A. BRYANT, Commissioner, Prec. 2
CLARK MORELAND, Commissioner, Prec. 3
LOUIS OSBORNE, Commissioner, Prec. 4
ROSENELLE CHERRY, County Clerk

The first business to come before the court was the reading of the minutes of the meeting held on January 2, 1964 and they were read and approved with the exception of describing the Commissioners Precincts by metes and bounds to correspond with the plat previously adopted at a meeting held on August 31, 1963. Motion by Commissioner Gideon, seconded by Commissioner Bryant, and all four commissioners voting in favor to adopt the following metes and bounds descriptions of Commissioners Precinct boundary lines in Midland County:

Precinct 1

Beginning at a point on the North boundary line of Midland County just North of Section 1, Block 40, Twp 1-South, T & P Rwy. Co. Survey and the point just north of Section 6, Block X, H.P. Hilliard Survey proceeding on this Section line in a Southeasterly direction to the point separating Section 36 & 37 of Block 40 Twp 2-South, and Section 31 & 42, Blk. 39 Township 2-South, T & P Railway Co. Survey. Proceeding on this Section line in an easterly direction to the Section line between Sections 36 & 37 of Block 39, Township 2-South, T & P Rwy. Co. Survey and Sections 24 & 25, Block 38, Twp 2-South, T & P Rwy. Co. Survey. Proceeding on this section line north to Highway 80 thence easterly along Highway 80 to the point on the Section line between

Section 36, Block 38, Twp 1-South, and Section 31, Block 37 Township 1-South, T & P Railway Co. Survey, Thence North on this Section line to the North boundary line of Midland County. Thence West along the North Boundary line of Midland County to the place of beginning.

Precinct 2

Beginning at that point on the North boundary line of Midland County between Section 24, Block 38, Twp 1-South, T & P Railway Co. Survey and Section 19, Block 37, Twp 1-South, T & P Railway Co. Survey. Thence East along the North boundary line of Midland County to the Northeast corner of the County line; Thence South along the eastern boundary line of Midland County to the point between Section 44, Block 36, Twp 2-South, T & P Railway Co. Survey and Section 5, Block 36, Twp. 3-South, T & P Railway Co. Survey. Thence along this Section line in a westerly direction to the point dividing Section 36, Block 38, Twp 2-South, T & P Railway Co. Survey and Section 48, Block 39, Twp 2-South, T & P Railway Co. Survey; Thence North along this Section line to Highway 80; Thence East along Highway 80 to the point between Sec. 31, Blk 37, Twp 1-South and Sec. 36, Blk. 38, Twp 1-South, T & P Railway Co. Survey; Thence North to the North Boundary line of Midland County and the point of beginning.

Precinct 3

Beginning at the East boundary line of Midland County at a point between Sec. 4, Blk. 36, Twp 3-South, T & P Railway Co. Survey and Sec. 5, Blk. 36, Twp 3-South, T & P Railway Co. Survey proceeding along the East boundary line of Midland County South to the Southeast corner

of Midland County; Thence West along the South boundary line of Midland County to the point between Section 37, Block 40, Twp 4-South, T & P Railway Company Survey and Section 42, Block 39, Twp 4-South, T & P Railway Co. Survey; Thence North along this Section line to the point between Section 37, Block 40, Twp. 2-South and Section 42, Block 39, Twp. 2-South, T & P Railway Co. Survey; Thence East along this Section line to the point between Sec. 37, Blk. 39, Twp 2-South and Sec. 25, Blk. 38, Twp 2-South, T & P Railway Co. Survey. Thence South along this Section line to the point between Section 1, Blk. 39, Twp. 3-South, T & P Railway Co. Survey and Sec. 6, Blk. 38, Twp 3-South, T & P Railway Co. Survey; Thence East along this Section line to the East boundary line of Midland County and its point of beginning.

Precinct 4

Beginning at the point just north of Section 6, Blk.X, H. P. Hilliard Survey and Sec. 1, Blk. 40, Twp 1-South, T & P Railway Company Survey on the North boundary line of Midland County, proceeding West to the Northwest corner of Midland County along the North boundary line of Midland County; thence South along the Western boundary line of Midland County to the Southwest corner of Midland County; Thence East along the South boundary line of Midland County to the point on the Section line between Sec. 37, Block 40, Twp 4-South, T & P Railway Company Survey and Section 42, Block 39, Twp 4-South, T & P Railway Co. Survey; Thence North along this Section line to the North boundary line of Midland County and its point of beginning.

There being no further business to come before the court the meeting was adjourned.

ATTEST: /s/ Rosenelle Cherry, County Clerk

/s/ Barbara G. Culver, County Judge

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

I, Rosenelle Cherry, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Midland County, Texas, do hereby certify that the attached and foregoing is a true and correct copy of an Order adopted by said Commissioners' Court at a meeting held on the 7 day of January, 1964, as same appears of record in Volume 8, Page (s) 259-260, of the official minutes of said Commissioners' Court on file in my office, together with excerpts from said minutes showing those present at said meeting and the approval of the minutes of said meeting.

WITNESS MY HAND AND THE OFFICIAL SEAL OF SAID COMMISSIONERS' COURT this 12 day of May. 1964.

ROSENELLE CHERRY
Rosenelle Cherry,

(Seal)

County Clerk and ExOfficio Clerk
of the Commissioners' Court of
Midland County, Texas